

# SENATE BILL REPORT

## ESSB 6037

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As Passed Senate, March 10, 2009

**Title:** An act relating to removing oversight of the department of licensing from specific businesses and professions.

**Brief Description:** Removing oversight of the department of licensing from specific businesses and professions.

**Sponsors:** Senate Committee on Government Operations & Elections (originally sponsored by Senators Fairley and Pridemore; by request of Governor Gregoire).

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/23/09 [DPS-WM].

Passed Senate: 3/10/09, 46-0.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6037 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott and Pridemore.

**Staff:** Sharon Swanson (786-7447)

**Background:** The Director of the Department of Licensing (DOL) is required to supervise and administer the activities of the DOL and must advise the Governor and the Legislature with respect to matters under the jurisdiction of the DOL. In addition to other powers and duties granted to DOL, the Director must administer all laws with respect to the examination of applicants for, and the issuance of licenses to persons to engage in any business, profession, trade, occupation, or activity except for health professions.

License is defined as a certificate of registration, certificate of qualification, certificate of competency, certificate of authority, and any other instrument, by whatever name designated, authorizing the practice of a profession or calling, the carrying on of a business or occupation, or the doing of any act required by law to be authorized by the state.

The Consumer Protection Act (CPA), first enacted in 1961, prohibits unfair or deceptive practices in trade or commerce. The act includes prohibitions on anti-competitive behavior

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and restraints on trade. The act may be enforced by private parties, the state, counties, municipalities, and all political subdivisions of the state.

In a lawsuit for a CPA violation, a prevailing plaintiff is entitled to recover (1) actual damages sustained; (2) the costs of the suit; and (3) reasonable attorney's fees. Additionally, a court has the discretion to award additional damages in the amount of up to three times the actual damages sustained by the plaintiff.

To prevail on a private CPA claim, a plaintiff must show (1) an unfair or deceptive act or practice that occurs in trade or commerce; (2) a public interest; (3) injury to the plaintiff in the plaintiff's business or property; and (4) a causal link between the unfair or deceptive act and the injury suffered.

**Summary of Engrossed Substitute Bill:** The following businesses are no longer required to be licensed by the DOL:

1. employment agencies;
2. whitewater rafting;
3. sellers of travel;
4. telemarketing;
5. camp resorts; and
6. auctioneers.

Employment Agencies. The Attorney General, independently or under civil investigative authority must have the authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Records must be maintained for four years.

Before conducting any business as an employment agency each employment agency must file with the Attorney General and maintain a surety bond in the sum of \$20,000 running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the employment agency or the agency's agent.

Each employment agency is required to post, in a conspicuous place in each office in which it conducts business, notice that complaints concerning possible violations of the RCW may be made to the consumer protection unit of the Attorney General's office.

A new section is added to incorporate the CPA provisions into RCW 19.31.

Whitewater Rafting. While carrying passengers for hire on whitewater rivers in this state, a whitewater river outfitter must carry proof of liability insurance for a minimum of \$300,000 per claim for occurrences by the whitewater river outfitter and the whitewater river outfitter's employees that result in bodily injury or property damage.

Sellers of Travel. Any person or persons who have suffered monetary loss by an act which constitutes a violation may bring a civil action in court against a seller of travel and the surety upon such bond of the seller of travel who committed the violation or who employed the seller of travel who committed the violation. A civil action must be filed no later than

one year following the alleged violation or completion of travel by the customer, whichever occurs later.

Service of process upon a nonresident seller of travel must be made by leaving a copy of the process with the Secretary of State. The fee for the service of process must be determined by the Secretary of State by rule.

Telemarketing. Each commercial telephone solicitor must appoint the Secretary of State as an agent to receive civil process if the commercial telephone solicitor has no agent.

Camp Resorts. In the event an operator sells or otherwise permanently withdraws a camping resort from use by purchasers, the legislation specifies a schedule for damages.

A new section is added to incorporate the CPA provisions into RCW 19.15.

Auctioneers. Each auctioneer and each auction company must obtain and maintain a surety bond in the amount of \$5,000 for the benefit of any person injured or damaged as a result of any violation by the auctioneer or auction company.

A new section is added to incorporate the CPA provisions into RCW 18.11.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed, except section 804 which takes effect on July 1, 2010.

**Staff Summary of Public Testimony:** PRO: Travel agents are required to maintain a trust account and display a Unified Business Identifier number. This should allow for effective deterrence to travel fraud. These bills are part of the Governor's package of bills to streamline state government and provide for cost savings and efficiency. Businesses are required to have surety bonds and liability insurance, and the CPA now covers additional statutes. The efforts to ensure savings to our state continue.

**Persons Testifying:** PRO: Steve Danishek, TMA Travel; Charles Beck, citizen; Bruce Botka, Governor's Office.